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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

MOBILEMEDIA CORPORATION)

WT Docket No. 97-115

Applicant for Authorizations)
and Licenses of Certain Stations)
in Various Services)

To: The Commission

RESPONSE OF TRIAD CELLULAR CORPORATION

Triad Cellular Corporation ("Triad"), by its attorneys and pursuant to Section 1.106(h) of the Commission's rules^{1/}, hereby responds to (a) the "Wireless Telecommunications Bureau's Consolidated Comments on the Petitions of Mark Witsaman, Santo Pittsman, Debra Hilson, Western Wireless Corporation and Triad Cellular Corporation filed July 21, 1997 ("the Bureau Comments"); (b) MobileMedia, Inc.'s Consolidated Comments on the Petitions for Partial Reconsideration, Clarification or Special Relief filed July 14, 1997 ("the MobileMedia Comments"); (c) the Supplemental Comments of MobileMedia Corporation filed July 21, 1997 (the "MobileMedia Supplement"); (d) the Comments of Falcon Holding Group, L.P. in Support of Emergency Petition for Limited Reconsideration or Clarification filed July 14, 1997 (the "Falcon Comments"); and (e) the Petition for Limited Waiver and Expedited Qualifications Finding filed on behalf of Hellman & Friedman Capital

^{1/} 47 C.F.R. Section 1.106(h).

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Partners II, L.P. on July 23, 1997 (the "Hellman & Friedman Petition").^{2/} In response, the following is respectfully shown:

I. Preliminary Statement

1. Triad submitted its Petition for Partial Reconsideration ("the Triad Petition") on July 7, 1997 seeking limited reconsideration of the Mobilemedia Stay Order^{3/} to the extent that Paragraph 18 of that order put a freeze on the processing of the pending application seeking Commission consent to the assignment of all of Triad's cellular facilities to Western Wireless Corporation ("Western").^{4/} Significantly, other interested parties who have commented upon Triad's Petition are generally supportive of the relief Triad seeks. For example, MobileMedia indicates that it does not oppose the clarification suggested in the Triad Petition nor seek to interfere with efforts by companies such as Triad to seek relief from Paragraph 18 of the Stay Order.^{5/} Falcon also supports the relief sought by Triad.^{6/} Even the Wireless Telecommunications Bureau, which tries to defend the scope of Paragraph

^{2/} In the interest of economy, Triad is filing a single response to these submissions, all of which raise issues related to Paragraph 18 of the Stay Order. Triad is submitting this consolidated response on the due date for a reply to the timely filed comments.

^{3/} MobileMedia Corporation, FCC 97-197, released June 6, 1997.

^{4/} Western is not under common control with MobileMedia, but does have a non-controlling attributable investor, Hellman & Friedman, which also holds a significant stake in MobileMedia. This subjects Western applications to the freeze outlined in Paragraph 18 of the Stay Order.

^{5/} MobileMedia Comments, p. 3; MobileMedia Supplement, p. 2. MobileMedia does make it clear that the requested relief from Paragraph 18 should not result in resumption of the MobileMedia revocation proceeding.

^{6/} Falcon Comments, Section 1 and Note 3. Hellman & Friedman specifically indicates that the public interest would clearly be served by a grant of the relief sought by Triad given the exigencies of the proposed acquisition of Triad by Western. Hellman & Friedman Petition, pp. 3-4 and Note 4.

18 of the Stay Order, indicates that "it would be useful if the Commission takes this opportunity to articulate a procedure by which its Bureaus and Offices may process, during the pendency of the stay, applications of third party applicants, such as Western and Triad, in which a potential wrongdoer of MobileMedia holds an attributable interest."^{7/} The Bureau specifically indicates that it is sensitive to the fact that third party licensees, such as Western and Triad, have no direct relationship to the misconduct, but nevertheless have been adversely affected by the Stay Order. The Bureau also professes a strong interest in minimizing the disruption to the ongoing operations of licensees who are affected in this manner.^{8/} In view of these comments, the Commission should give the Triad Petition prompt favorable consideration.

2. In this regard, the Commission must note that the relief sought by Triad is not mutually exclusive with any other ruling or order of procedure being sought by other parties to the proceeding. The principal point made by Triad in its Petition is that assignment applications are uniquely time-sensitive and deserving of expedited treatment by the Commission. Triad has established that the Commission can process and grant the Triad/Western Assignment without undermining in any fashion its enforcement authority with regard to the misconduct at issue in the MobileMedia proceeding. The Commission also can exempt the Triad/Western Assignment from the strictures of Paragraph 18 of the Stay Order without prejudice to the consideration of the suggestions by MobileMedia, Falcon and others that procedures be established to enable parties to petition to have their names removed from the list of "suspected wrongdoers". The Commission also can grant the relief

^{7/} Bureau Comments, Section IIIC.

^{8/} Id.

Triad seeks without prejudging or delaying its consideration of the Hellman & Friedman Petition. Thus, Triad does not oppose the avenues of relief being sought by other parties, but emphasizes that those alternatives do not obviate the need for the relief Triad is seeking.

II. The Bureau Comments Fail to Address Important Issues Raised By Triad

3. The Bureau Comments purport to address the issues raised in both the Triad Petition and the separate Emergency Petition for Limited Reconsideration or Clarification filed by Western on July 3, 1997 ("the Western Petition"). In reviewing the Bureau Comments, however, one would think that Triad and Western filed virtually identical petitions which make all the same arguments. This is not the case. Western's Petition understandably addressed the impact of Paragraph 18 on all of its pending applications, including modification applications, applications for new facilities, applications for new services, etc. The Triad Petition, in contrast, focused solely upon the unique issues that are raised when the Commission defers action upon a pending assignment application. Analysis reveals that the Bureau has failed to adequately consider these important, compelling public interest arguments.

4. The Triad Petition cites Grayson Enterprises, 79 FCC 2d 936 (1980), for the proposition that the Commission should decide at the time of the designation of a basic qualifications hearing, the impact of the designation on other related licenses. The Bureau submits that the circumstances of the MobileMedia case do not fit squarely within the typical Grayson analysis, noting that Grayson generally deals with situations involving multiple licenses of the same licensee. Here, the issue is whether disqualifying issues will affect a different applicant which happens to share some common principals with the other licensee who was charged with misconduct.

Triad agrees that the situation is different, and in fact noted the distinctions in its Petition. See Triad Petition, Paragraphs 17 and 18. What the Bureau fails to acknowledge, however, is that the different procedural situation here serves to undermine and not support the breadth of Paragraph 18 of the Stay Order.

5. In determining whether to extend implications of potentially disqualifying conduct to uninvolved stations, the core determination is whether the Commission believes there is a risk that the conduct will be repeated. Clearly, this risk is diminished if the other stations are held by a different licensee and if the alleged wrongdoer is not in a position of control. Simply stated, the lack of identity between Western and MobileMedia serves to reduce the justification for including Western's (and Triad's) uninvolved stations within the ambit of the MobileMedia proceeding.^{9/}

6. The Bureau properly notes that the Grayson policy enables the Commission to take appropriate action against other stations at a later point in time if the circumstances warrant. Bureau Comments, Paragraph 12. However, a later decision to extend potentially disqualifying issues to other uninvolved stations not included in an original designation order necessarily requires some further evidence of wrongdoing that was not known to the Commission when the original designation order was adopted. Here, there has been no new evidence of misconduct by Hellman & Friedman that would justify sweeping new applications within the ambit of the MobileMedia proceeding. To the contrary, as is demonstrated by the Hellman & Friedman Petition, the ample record uniformly and compellingly demonstrates that

^{9/} Paragraph 16 of the Bureau Comments argues that the character qualifications of Board members and major interest holders of licensees are relevant, whether or not they are in positions of control. However, the Bureau has cited no instance in which a license was denied because a non-controlling minority interest holder and board member was a party to a revocation proceeding involving another licensee.

none of the Hellman & Friedman principals participated in, orchestrated, approved or had any knowledge of the wrongdoing which was voluntarily disclosed to the Commission by MobileMedia in the October 15, 1996 Counsel's Report. In fact, evidence indicates that Hellman & Friedman was a moving party in the decision to immediately authorize a thorough internal investigation of the misconduct, to fully cooperate with the Commission, and to implement a compliance program. Thus, if anything, developments since the MobileMedia case was designated for hearing would justify narrowing rather than broadening the scope of licenses that are potentially affected by the admitted misconduct.

7. The most disappointing aspect of the Bureau Comments is its failure to acknowledge the long line of cases in which the Commission has found assignment and transfer applications to be deserving of expedited treatment. See Triad Petition, Section III. Nor did the Bureau address the Cellular System One of Tulsa^{10/} precedent, cited in the Triad Petition, in which the Commission specifically found that serious disqualifying conduct involving radio paging services should not be extended to assignment and transfer applications involving cellular services because of the substantial public interest considerations favoring the rationalization and realignment of cellular interests to promote efficient operation and effective competition. See Triad Petition, paragraphs 21, 22.

8. The Bureau also fails to address Triad's argument that allowing the Triad/Western Assignment to go forward will not undermine the Commission's enforcement authority in any fashion. It is commonplace for the Commission to grant consent to an assignment subject to the outcome of ancillary proceedings. For example, in Texas Broadcasting Corp., 42 FCC 2d 997 (1973), adverse parties sought

^{10/} 102 FCC 2d 86 (1985).

the deferral of an assignment of a television station license because of several pending proceedings which potentially implicated the license in question. Based upon a determination that the applicants were otherwise qualified, the Commission granted the assignment "subject to the outcome and without prejudice to any action the commission may deem necessary as a result of the final determinations in the [corollary] proceedings." *Id.* at 998. In Technico Leasing Inc., 40 FCC 2d 1164 (1973), a petitioner alleged that a pending inquiry into certain radio subscription agreements acted as a bar to the processing of a radio station assignment. The Commission proceeded to grant the assignment "without prejudice to whatever action the Commission may deem appropriate upon conclusion of the [subscription agreement] proceedings." *Id.* at 1167. In Stockholders of Infinity Broadcasting Corporation, FCC 96-495, released December 26, 1996, 1996 FCC LEXIS 7153; 5 Comm. Reg. (P & F) 1074 (1996), a petitioner alleged that unresolved indecency complaints respecting broadcasts of the Howard Stern Show prevented action upon a pending assignment. The Commission proceeded nonetheless to approve the transaction "without prejudice to whatever further action, if any, the Commission deems appropriate with respect to the pending indecency complaints."

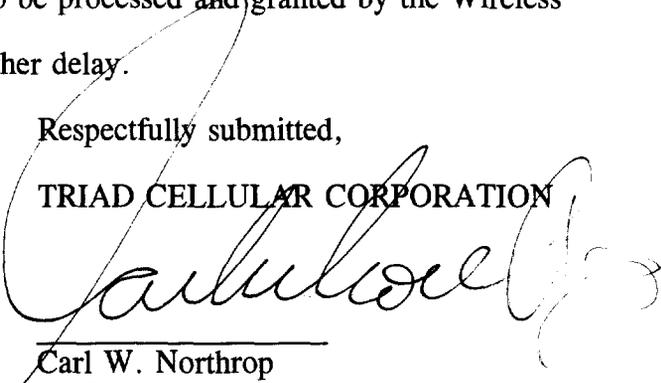
9. This line of cases provides ample authority for the Commission to act immediately on the Triad/Western Assignment. If the qualifications of Hellman & Friedman have not yet been fully established to the Commission's satisfaction -- which in Triad's view they should be -- the Commission may impose a condition making the grant of the assignments subject and without prejudice to whatever further actions the Commission may deem appropriate depending upon further developments in the MobileMedia and related proceedings.

CONCLUSION

The foregoing premises having been duly considered, Triad respectfully requests that its Petition for Partial Reconsideration of the Stay Order be granted, and that Paragraph 18 of that order be modified, limited or clarified in order to permit the Triad/Western assignment applications to be processed and granted by the Wireless Telecommunications Bureau without further delay.

Respectfully submitted,

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July 31, 1997

CERTIFICATE OF SERVICE

I, Diane Mimiaga, a secretary in the law offices of Paul, Hastings, Janofsky & Walker LLP, do hereby certify that on this 31st day of July, 1997, I caused copies of the foregoing Response of Triad Cellular Corporation to be sent by first-class mail, postage pre-paid, or by hand-delivery* to the following:

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